

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RUSSELL TINSLEY

v.

LOUIS GIORLA, et al.

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CIVIL ACTION

NO. 05-CV-2777

SURRICK, J.

AUGUST 22, 2006

MEMORANDUM & ORDER

Presently before the Court is Plaintiff Russell Tinsley's Motion For A Temporary Restraining Order And Preliminary Injunction (Doc. No. 24). For the following reasons, the request for a temporary restraining order will be denied.

I. BACKGROUND

Plaintiff Russell Tinsley is currently incarcerated at the Curran Fromhold Correctional Facility and is awaiting trial in the Philadelphia Court of Common Pleas on charges of rape, involuntary deviate sexual intercourse, sexual assault, and other related crimes. (Doc. No. 24 at 2.) Plaintiff is representing himself in the criminal matter.¹ (*Id.* at 1.) Plaintiff's criminal trial is scheduled for September 11, 2006. (*Id.*)

¹ After talking to the Judge of the Court of Common Pleas who is handling the criminal matter, Plaintiff's counsel in this case informed this Court that Plaintiff was appointed counsel in the criminal matter, that he subsequently reported his attorney to the State Disciplinary Board for ineffective assistance of counsel, and that the court then approved the attorney's request to withdraw. Thereafter, Plaintiff asserted that he would represent himself in the criminal matter. However, Plaintiff has failed to provide this Court with any evidence of an on-the-record waiver of counsel and request to proceed *pro se*. On August 17, 2006, we held a hearing at which counsel for both parties presented oral argument but did not present any evidence or testimony. Accordingly, there is no evidence on this record concerning whether there was a voluntary and intelligent waiver of counsel and whether standby counsel was appointed.

Plaintiff filed a Complaint in the Eastern District of Pennsylvania on August 9, 2005 (Doc. No. 6). The case was assigned to the Honorable Thomas N. O'Neill. An Amended Complaint was filed on July 7, 2006 after Judge O'Neill appointed counsel to represent Plaintiff. (Doc. No. 20.) The Amended Complaint alleges the following claims under 42 U.S.C. § 1983: inadequate access to the prison legal library in violation of the Fourteenth Amendment (Count I), denial of legal correspondence in violation of the First Amendment (Count II), seizure of legal papers in violation of the Fourth Amendment (Count III), retaliation in violation of the First and Fourteenth Amendments (Count IV), and cruel and usual punishment in violation of the Eighth and Fourteenth Amendments (Count V). Plaintiff filed the instant Motion for a Temporary Restraining Order and Preliminary Injunction on August 16, 2006. (Doc. No. 24.) The Motion focuses only on Plaintiff's access to the prison law library. Since Judge O'Neill was unavailable, the Motion was assigned to this Judge as Emergency Judge.

Plaintiff asserts that he is entitled to a temporary restraining order and that the matter is now urgent for two reasons. First, while Plaintiff had initially had some access to the law library, although he claimed that it was insufficient, he has been completely barred from using the law library at all since March 2006. Defendants advise that this ban is due to an Order by the Honorable William Mazzola of the Philadelphia Court of Common Pleas, issued on March 16, 2006. This Order, which is handwritten, states: "Court hereby ordered All Library Privileges, and All Legal Mailing Privileges Revoked until further noticed."² (Doc. No. 24 at Ex. B.) Second, Plaintiff's criminal trial is scheduled to commence in less than one month, and Plaintiff

² This March 16, 2006 Order was not mentioned in the Amended Complaint. (Doc. No. 20.)

asserts that the total ban on his use of the law library makes it impossible for him to effectively represent himself in his upcoming trial.

II. DISCUSSION

“[I]n ruling on a Motion for a Temporary Restraining Order, this court must consider: 1) the likelihood of success on the merits; 2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; 3) the balance of the hardships to the respective parties; and 4) the public interest.” *Lewis v. Edinger*, No. Civ. 04-1410, 2005 WL 1819522, at *2 (D. Del. Aug. 3, 2005) (quoting *Opticians Ass’n of Am. v. Indep. Opticians of Am.*, 920 F.2d 187 (3d Cir. 1990)).³ “[T]he grant of injunctive relief is an ‘extraordinary remedy, which should be granted only in limited circumstances.’” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir. 1989) (quoting *Frank’s GMC Truck Ctr., Inc. v. Gen. Motors Corp.*, 847 F.2d 100, 102 (3d Cir. 1988)).

A. Injunctive Relief

We are not convinced that Plaintiff has met the four-prong test for a temporary restraining order. While Plaintiff raises numerous constitutional claims in the underlying § 1983 action, the instant Motion deals only with his inability to access the prison law library and his need for such access to properly represent himself at trial on September 11th. Plaintiff asserts that his claim is based on two landmark Supreme Court cases: *Bounds v. Smith*, 430 U.S. 817 (1977), in which the Court held that, with respect to civil rights suits by prisoners, “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and

³ The standard for granting a preliminary injunction is the same. See *S&R Corp. v. Jiffy Lube Int’l, Inc.*, 968 F.2d 371, 374 (3d Cir. 1992).

filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law,” *id.* at 828, and *Faretta v. California*, 422 U.S. 806 (1975), in which the Court held that a defendant in a state criminal trial has a constitutional right to proceed without counsel, *id.* at 819-20. Plaintiff acknowledges that the Third Circuit has never specifically addressed whether the *Boundsholding* applies to criminal defendants who have chosen to represent themselves. (Doc. No. 24 at 5.) Plaintiff also acknowledges that at least five other circuits have addressed this exact question and concluded that “a prisoner who knowingly and voluntarily waives appointed representation by counsel in a criminal proceeding is not entitled to access to a law library.” *Degrate v. Godwin*, 84 F.3d 768, 769 (5th Cir. 1996); *see also United States v. Byrd*, 208 F.3d 592, 593 (7th Cir. 2000) (“[W]hen a person is offered appointed counsel but chooses instead to represent himself, he does not have a right to access to a law library.”); *United States v. Smith*, 907 F.2d 42, 45 (6th Cir. 1990) (“[S]tate does not have to provide access to a law library to defendants in criminal trials who wish to represent themselves.”); *United States v. Wilson*, 690 F.2d 1267, 1271 (9th Cir. 1982) (“We decline to interpret the right to self-representation under the Sixth Amendment to include a right to conduct one’s own research at government expense.”); *United States v. Chatman*, 584 F.2d 1358, 1360 (4th Cir. 1978) (obligation to provide access to the courts was satisfied by the offer of counsel which defendant refused). Plaintiff maintains that despite the agreement of the Fourth, Fifth, Sixth, Seventh, and Ninth Circuits on this issue, the Third Circuit would nevertheless conclude

that prisoners proceeding as *pro se* criminal defendants have a constitutional right to access to a law library.⁴

Although it may be possible that the Third Circuit, under the proper set of facts, would disagree with the Fourth, Fifth, Sixth, Seventh, and Ninth Circuits on this issue, Plaintiff has failed to provide this Court with sufficient facts to support the granting of a temporary restraining order. Plaintiff's counsel has informed the Court that Plaintiff is representing himself in the criminal matter; however, Plaintiff has produced no evidence to indicate that he "knowingly and voluntarily waive[d] appointed representation." *Degrade v. Godwin*, 84 F.3d at 769. Moreover, we do not know whether standby counsel was appointed in the criminal case. Despite the fact that we held a hearing in this matter, no evidence or testimony was presented. (*See* Aug. 17, 2006 Hr'g Tr.; *supra* note 1.)

In addition, the federal court record includes several items that have not been explained or addressed by the parties and that may impact Plaintiff's circumstances. In his initial filing with the Court, Plaintiff attached a copy of an unsigned Order from the Philadelphia Court of Common Pleas dated May 12, 2005. The Order acknowledges Plaintiff's waiver of counsel and the court's approval of his choice to represent himself and orders that he be provided "legal law Library service, Telephone Access, Free Postage, Copies, Envelopes and Supplies, as well as up to 10-20 hours of law Library a week." (Doc. No. 1.) An identical Order dated September 7,

⁴ Plaintiff relies on a comment in *Peterkin v. Jeffes*, 855 F.2d 1021 (3d Cir. 1988), regarding the notion that the state has an obligation to provide law library access to those pursuing direct appeals to suggest that the Third Circuit would likely apply the *Bounds* holding to *pro se* criminal defendants at the pre-trial stage. However, *Peterkin* referred to the decision of the Ninth Circuit in *Wilson* and the Fourth Circuit in *Chapman* and specifically declined to comment on its view of the interplay between *Faretta* and *Bounds*. *Id.* at 1043.

2005 is also attached to Plaintiff's March 18, 2006 correspondence with the Court. We do not know if these are valid orders issued by the court and have no additional information about these Orders or their relationship to the March 16, 2006 Order executed by Judge Mazzola that revoked Plaintiff's law library and legal mailing privileges. In addition, the federal court record includes a "Protective Custody Investigation Form" dated March 8, 2006 that describes Plaintiff's request to be placed in protective segregation. In that document, Plaintiff alleged that the law library officer refused to hire him for a job and then threatened to kill him. Plaintiff attached this form to his March 18, 2006 correspondence with the Court. (Letter from Plaintiff to Judge O'Neill, March 18, 2006.) However, we have not been presented with any evidence or testimony regarding this incident and its potential connection to the March 16, 2006 Order revoking Plaintiff's library privileges. Absent additional information and clarification regarding the appointment of counsel, the appointment of standby counsel, Plaintiff's rejection of counsel, Plaintiff's understanding of the import of that rejection, what exactly occurred in March 2006, and the effect of what occurred on the March 16th Order, we are not in a position to determine the interplay between *Bounds* and *Faretta*, the Third Circuit's likely view on this issue, and its application to this case.⁵ See *Peterkin v. Jeffes*, 855 F.2d 1021, 1043 (3d Cir. 1988) (Third Circuit declined to decide the interplay between *Bounds* and *Faretta* where plaintiff's *pro se*

⁵ In addition, despite the Third Circuit's silence on the issue, given the fact that the Fourth, Fifth, Sixth, Seventh, and Ninth Circuits agree that a criminal defendant who waives his right to counsel has no right to access to a law library, it would be difficult to conclude that Plaintiff has demonstrated a likelihood of success on the merits in his claim of a right to access to the law library in the identical circumstances.

status is ambiguous). Accordingly, we will deny Plaintiff's request for a temporary restraining order.⁶

B. *Younger* Abstention

In any event, even if we were to conclude that injunctive relief was appropriate in this case, we are not convinced that federal intervention is appropriate at all given that any action by this Court to require the prison to provide Plaintiff with access to the law library would directly contravene an Order of the Philadelphia Court of Common Pleas. The Supreme Court, in *Younger v. Harris*, 401 U.S. 37 (1971), “established a principle of abstention when federal adjudication would disrupt an ongoing state criminal proceeding.” *Prevost v. Twp. of Hazlet*, 159 Fed. App'x 396, 398 (3d Cir. 2005). “*Younger* and its companion cases express the ‘fundamental policy against federal interference with state criminal prosecutions.’” *Matherly v. Lamb*, 414 F. Supp. 364, 367 (E.D. Pa. 1976) (quoting *Younger*, 401 U.S. at 46). Abstention under *Younger* is appropriate when: “(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims.” *Schall v. Joyce*, 885 F.2d 101, 106 (3d

⁶ Plaintiff's Motion for a Temporary Retraining Order and Preliminary Injunction sought relief only from the portion of the state court Order that revoked Plaintiff's access to the prison law library and did not seek relief from the revocation of Plaintiff's legal mailing privileges. (Doc. No. 24.) As a result, we do not address this issue specifically. However, we caution that “[i]nterference with legal mail implicates a prison inmate's right to access to the courts. Under *Bounds v. Smith*, 430 U.S. 817 (1977), prison inmates have a constitutional right to access the courts under the First Amendment.” *Johnson v. United States*, No. Civ. A. 3:03-0756, 2005 WL 2736512, at *2 (M.D. Pa. Oct. 24, 2005) (citing *Bounds*, 430 U.S. at 824-25). In addition, we note that “[i]n balancing the competing interests implicated in restrictions on prison mail, courts have consistently afforded greater protection to legal mail than to non-legal mail.” *Johnson v. Goord*, 445 F.3d 532, 534 (2d Cir. 2006). While a prisoner's right to send and receive mail may be regulated, such action is only “valid if it is reasonably related to legitimate penological interests.” *Id.* (internal citation omitted).

Cir. 1989). *Younger* abstention is not appropriate, however, if “the federal plaintiff can establish that (1) the state proceedings are being undertaken in bad faith or for purposes of harassment or (2) some other extraordinary circumstances exist, such as proceedings pursuant to a flagrantly unconstitutional statute, such that deference to the state proceeding will present a significant and immediate potential for irreparable harm to the federal interests asserted.” *Id.* at 106. Moreover, while we are always constrained in our use of injunctive relief by the principle of “irreparable injury,” it “is compounded in this context by the principle of comity.” *Matherly*, 414 F. Supp. at 367.

Considering these factors, we are compelled to conclude that *Younger* abstention applies and that it would be a violation of the strong policies embodied in that doctrine to intervene at this time. Plaintiff has not alleged any bad faith or harassment at the state level that would warrant federal intervention. In addition, there are clearly ongoing state proceedings since Plaintiff is awaiting trial on criminal charges in the Philadelphia Court of Common Pleas. Undoubtedly, the state proceedings implicate the important state interest in adjudication of criminal charges brought against the citizens of Pennsylvania. Moreover, the state proceedings clearly afford an adequate opportunity to raise the federal claims at issue in this Motion. Plaintiff has filed the instant Motion in federal court because of an ongoing federal civil rights suit over inadequate access to the law library along with other constitutional claims arising out of the conditions of his imprisonment. However, Plaintiff has made no effort to challenge the state court’s Order barring his access to the law library in the state court. Plaintiff contends that the Order bars legal mailing privileges and thus precludes him from filing a motion for reconsideration or other similar challenge in the state court. Even under these circumstances,

however, Plaintiff maintains the right to raise his constitutional claims at trial and to appeal any criminal conviction and raise the constitutional claims again on appeal. “The focus of *Younger* is on preserving the ability of state defendants to vindicate in a single proceeding the federal constitutional rights which they claim have been infringed.” *Id.* at 368. In this case, Plaintiff will have an opportunity to challenge the state court Order barring his access to the law library both in his state court proceedings and on appeal. *See id.* (finding that *Younger* abstention applies because “this is not a case where [plaintiffs] will be . . . unable to vindicate their state and federal constitutional rights by defending the charges against themselves in a single proceeding and by testing the legal bases of possible convictions by way of direct appeals in the state courts”) As a result, we are compelled to conclude that under the *Younger* abstention doctrine, it would be inappropriate for this Court to intervene in the state court matter.

An appropriate Order follows.

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CIVIL ACTION

NO. 05-CV-2777

ORDER

AND NOW, this 22nd day of August, 2006, upon consideration of Plaintiff Russell Tinsley's Motion For A Temporary Restraining Order And Preliminary Injunction (Doc. No. 24), it is ORDERED that the request for a temporary restraining order is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
United States District Court Judge